THE BOSPHORUS ONLINE

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INTRODUCTION

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, Also 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 Comittee.

1. LIEN ON THE SALVED CARGO UNDER TURKISH LAW

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Pursuant to the Turkish Commercial Act (TCA) art. 1315 the salvors have lien on the salved cargo for their remuneration. As opposed to many other jurisdictions, under the Turkish procedural law, it is not just a tool to retain the cargo but it also entails the right to commence sale proceedings for

the salved cargo as well.

What this means is that the salvors could bring their claim to the bailiff and ask them to make a value assessment of the salved cargo. Subsequent to this the salvors start the enforcement proceedings and the bailiff allows a short time for the owners of the salved cargo to discharge the payment for the remuneration of the salvors. Failure of making the payment triggers the sale procedure to start to satisfy the salvors remuneration.

In order to prevent the sale proceedings from commencing, providing security could be the first solution to resort. However, the security always has to cover the bailiff proceedings and the possible court expenses, plus interest and other costs that incurs from the beginning to the end of the proceedings. Therefore, providing that the remuneration claim is fair and there is not much dispute over the amount, making the payment could be the most viable option to follow.

2. LEGAL CONSEQUENCES OF NOT SUBMITTING A REPLY SUBMISSION TO THE COURT IN TIME

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In Turkish Law, the consequence of not submitting a reply submission to court in time in relation to a case that was brought against the defendant is specified at article 128 of Civil Procedure Code numbered 6100. According to this, the defendant who has not presented a reply submission to the court in time shall be deemed to deny all the facts stated in claimant's submission. Pursuant to this fundamental rule, the defendant does not have to reply to the case. However, this would not let the claimant to evade the responsibility of proving their claims and the facts they claimed.

On the other hand, the defendant who has not submitted a reply submission to the court in time will be deemed to waived their rights to make explanations against the plaintiff's claims. In this case, the defendant would not be able to submit any justification towards denial and to present evidences in order to refute the claimant's claims. An opportunity is granted to the parties by the Civil Procedure Code which allows the parties to alter or extend their claims or defences for only once. However, a defendant who has not submitted a reply submission in time, can not use this opportunity either.

This matter caused some different interpretations. In various decisions, courts have tried to let the defendant at least to present their evidences and to prove their objections (denial) even though the defendant has not submit a reply submission in time. However, it has been held by the Supreme Court that a defendant, who did not submit a reply submission in time to the court, can not intervene in the case. Accordingly, the defendant will not be able to present evidence or justify their defences which will mean that the court will solve the dispute by only considering the claimant's evidences and claims.

Due to this binding precedent, submitting a reply submission in time is a necessity in order to not to loose the right of defence. As per the article 27 of the Civil Procedure Code, the defendant should submit their reply submission within two weeks after the receipt of the claimant's submission through the court. Therefore, it is crucial to contact with a lawyer immediately after the receipt of the claimant's submission in order not to suffer for procedural failures.

3. POLLUTION FINES IN TURKISH TERRITORIAL WATERS FOR 2016

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As it is well known, there are many conventions relating to prevention of marine pollution, such as International Convention for the Prevention of Pollution from Ships (MARPOL) and Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (LC) whom purpose is to prevent sea pollution emanating from vessels. Turkey is one of the countries that considers sea pollution being caused by the vessels is a major treat to its territorial waters, particularly Turkish Straits. Therefore, regulations have been imposed in order to protect its territorial waters environmentally. Consequently, the issue of pollution is regulated separately by the Turkish Environmental Code. The Article 8 of the Code provides that "*It is prohibited to introduce into, store in, transport to or remove from the receptor area any discharge or waste in such a way as to inflict damage on the environment or in a way directly or indirectly in contradiction with the standards and methods specified in the pertinent regulations, or to engage in similar activities*".

The fines for pollution in Turkish waters are imposed in accordance with an official published tariff, which is revised annually. The amount is determined by the size of the vessel and the type of pollutant, rather than the quantity. Regarding the payment, the fine must be paid within one month after the receipt of an official penalty decision, in which case the owner can benefit from 25% discount if the fine is paid within the above mentioned period of time. However, although the Environmental Code grants owners one-month maturity in terms of payment, it should be noted that the Authorities are nevertheless entitled to keep the vessel detained until the payment is made.

Maritime claims grant to its claimants a right to establish a precautionary attachment (i.e. arrest) on the vessel. However, this right comes to an end in case of a change in the ownership of the vessel.

Besides, despite the fact that the parties are entitled to object the penalty by launching a case in administrative court which should be within 30 days after the receipt of the official penalty decision, the fine has to be paid to the authorities within 30 days even if the case has been launched. However, the paid fine will be refunded to the owner if the case is resulted in owner's favour.

In addition to above, although the Environmental Law clearly states that the vessel should be released in case a letter of guarantee is issued by the owner's Bank or P&I Club, these letters have not been accepted by the relevant authorities and the fine, in any case, has been required as cash payment. However, according to the recent decision announced by the relevant authorities, as from this year, a letter of guarantee issued by the P&I Clubs will be accepted by the Environmental Authorities and consequently the vessels will be able to continue their voyages without any delay. Although, there has not been any decision made regarding the contents of the subject letter, the negotiations for the appropriate wording of the P&I guarantee letter have been proceeding.

The 2016 Tariff related to the pollution fines is as follows;

CATEGORY A: PETROLEUM PRODUCTS AND DERIVATIVES DISCHARGED BY TANKERS	**2016 TARIFF**
Up to 1,000 GT	TL 81,78 per Gross Ton
Between 1,001 and 5,000 GT	An additional TL 20,40 per Gross Ton
Over 5,000 GT	An additional TL 1.96 per Gross Ton
CATEGORY B: DIRTY BALLAST DISCHARGED BY TANKERS	
Up to 1,000 GT	TL 61,32 per

	Gross Ton
Between 1,001 and 5,000 GT	An additional TL 12.23 per Gross Ton
Over 5,000 GT	An additional TL 1.96 per Gross Ton
CATEGORY C: PETROLEUM PRODUCTUS, PETROLEUM DERIVATIVES AND DIRTY BALLAST WATER DISCHARGED BY SHIPS OR OTHER VESSELS	
Up to 1,000 GT	TL 40.87 per Gross Ton
Between 1,001 and 5,000 GT	An additional TL 8.14 per Gross Ton
Over 5,000 GT	An additional TL 1.96 per Gross Ton
CATEGORY D: GARBAGE, SEWAGE AND GRAY WATER DISCHARGED BY ALL SHIPS, TANKERS OR OTHER VESSELS	
Up to 1,000 GT	TL 20.40 per Gross Ton
Between 1,001 and 5,000 GT	An additional TL 4.03 per Gross Ton
Over 5,000 GT	An additional TL 0.77 per Gross Ton

4. EXCEPTIONS OF LIABILITY AS PER THE TURKISH, RUSSIAN AND AZERBAIJANI MARITIME LAW

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There are certain ways to escape liability because of loss of or damage to the cargo for the carrier. According the Turkish Commercial Code dated July 2012, there are five reasons in this regards; which are:

- Causes which can not be attributed to the carrier
- Technical / navigational error or fire on board
- Saving life at sea
- Exceptions of liability
- Conjunction of causes

Out of these 5 reasons for escape of liability, we are setting here below the exceptions of liability (which is generally in line with the Hague-Visy Rules):

4. Exceptions of the liability

Sub-article (1) of the article 1182 contains the list of causes for which the carrier is not liable of the consequences. (loss, damage or delay) This is in line with Hague –Visby Rules, except that article 1180 and 1181, as above explained and also missing the exception of Art.4.2 of Hague-

Visby Rules. (the Q Rule, so called ejusdem generis rule)

(1) Where the damage is caused by any of the reasons set out below, the Carrier and its men shall be deemed non-liable:

- *Perils and accidents of the sea and of the navigable waters where the ship is manageable*
- *Acts of war, riots and civil commotions, acts of public enemies, orders of the authoritative bodies and quarantine restrictions;*
- *Attachment orders of the courts;*
- *Strikes, lockouts and other stoppage or restraint of labour;*
- *Acts and omissions of the shipper, charterer or the owner of the goods or the representatives or the men of the shipper, charterer or the owner of the goods;*
- *Wastage in bulk of weight or any other loss or damage arising from inherent defect, quality or vice of the goods,*
- *Insufficiency of packing;*
- *Insufficiency or inadequacy of marks;*

Sub-article (2) sets out the fact that if one of the above listed causes would arise out of the neglect of the carrier or its servants, then the escape of liability is becoming not possible.

(2) Should it be proven that any of the circumstances set out in sub-section one above had come about by reason of an act of which the Carrier is liable for, then the Carrier cannot escape liability.

Sub-article (3) stipulates that the causes within the sub-article (1) are creating a prima facie exception of liability, which would be proven otherwise.

According Russian Maritime Law, these reasons are almost similar:

Article 166. Liability of the carrier

The carrier shall not be liable for the loss of or damage to goods taken over for carriage or for the delay of their delivery, if he proves that loss, damage or delay resulted from:

1) force majeure;
2) perils and accidents at sea or other navigable waters;
3) any measures taken to save life or reasonable measures taken to save property at sea;
4) fire, unless caused by the fault of the carrier ;
5) actions or orders by the relevant authorities (detention, arrest, quarantine and others);
6) act of war or civil commotions;
7) acts or omissions of the shipper or consignee;
8) latent defects of goods, its qualities or natural wastage;
9) defects in receptacle or packaging not discoverable from apparent condition;
10) insufficiency or inadequacy of marks;
11) strikes or other circumstances, causing a full or partial stoppage or restraint of work;
12) any other cause arising without the fault of the carrier, his servants or agents.

2. The carrier shall be deemed as having delayed delivery of goods, if the goods is not released in the port of discharge specified in the contract of carriage of goods by sea within the period of time fixed by the agreement of the parties, and in default of such agreement, during a reasonable period of time required from a diligent carrier with regard to the actual circumstances.

3. The person entitled to make a claim to the carrier in connection with loss of goods, may consider the goods lost, if the goods has not been released in the port of discharge to a person authorized to receive the goods, within thirty days from the expiry of the period of time established in paragraph 2 of this Article for the release of goods.

4. The carrier shall be liable for the loss of or damage to the goods taken over for carriage or the delay in their delivery from the time of taking over the goods for carriage till the time of its release.

Last but not least Azerbaijani maritime law stipulates in parallel of the above:

Article 130. Liability of a carrier

130.1. A carrier, who can prove that loss, damage or lateness of delivery of the Cargo took place because of the following reasons, is not responsible for loss, damage, or delay of delivery of the cargo:
130.1.1. force majeure;
130.1.2. dangers or occasions at sea or other waters, on that ships move;
130.1.3. measures for rescue of people at sea, or measures on saving of cargo;
130.1.4. fire, caused by no fault of the carrier;
130.1.5. actions or orders of the in accordance with power organs (delay, arrest, quarantine etc.);
130.1.6. military operations or public disturbances;
130.1.7. actions or inactivity of a carrier or receiver of the cargo;
130.1.8. deficiencies of the cargo, invisible on the face of them, features or natural loss of the cargo;
130.1.9. deficiencies of package of the cargo, imperceptible at external appearance;
130.1.10. unclearness or insufficient quantity of marks;
130.1.11. holidays or other events, causing complete or partial stoppage, or limitation of the work;
130.1.12. other situations, caused by no fault of carrier, his employees or agents;
130.2. The carrier is considered as delaying delivery of the cargo, if the cargo are not delivered to the port, stipulated by the contract about transportation of the cargo during the period, agreed by the sides, and in the event of absence of such contract, during the reasonable period with account of specific circumstances, demanded from the careful carrier.
130.3. If the cargo in the port of unloading is not passed to the person, responsible for taking it during 30 days, starting from the period, established under Articles 130.2 of this Code in the port of unloading, the person who is authoritative for bringing of a suit to the carrier because of loss of the cargo, can consider the cargo as lost.
130.4. Carrier is responsible for loss or damage of the cargo or delay of its delivery from the moment of reception of cargo for transportation till the moment of giving of it.
130.5. If carrier can prove that loss, damage or delay of delivery of the cargo took place because of actions or inaction of captain of the ship, other members of the ship's staff or sea guide in management of the ship (navigation mistake), then he is not responsible.
130.6. Carrier is not responsible for loss or damage of the cargo, that arrived at the destination port in cargo repair, cargo compartments and with cargo stamps of sender of the cargo, delivered in packing with absence of traces of opening in the way, and also transported escorted by representative of receiver or carrier of the cargo, if receiver of the cargo can not prove loss or damage of the cargo by fault of carrier of the cargo.

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