WATSON FARLEY
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BRIEFING

DOUBLE RECOVERY? DAMAGES FOR CARGO CLAIMS

JUNE 2018

- OWNER LIABLE TO CONSIGNEE FOR 'FULL' DAMAGES EVEN THOUGH CONSIGNEE COMPENSATED BY INTERMEDIATE SELLER

"THE COURT CONCLUDED THAT … IT MADE NO DIFFERENCE TO THE QUANTUM IF THE CONSIGNEE HAD ALREADY MADE PARTIAL RECOVERY FROM THE PERSON FROM WHOM IT HAD PURCHASED THE GOODS."

In *Sevylor Shipping v Altfadul Company (The Baltic Strait)*[1], the English High Court held that an owner was liable to a consignee bill of lading holder for its full damages claim in respect of a deteriorated cargo of bananas, even though the consignee had previously been compensated for over half that amount under a previous settlement reached with the intermediate seller. This outcome seems difficult to reconcile with key principles of English law and, in future disputes, may not apply or may be open to challenge.

The legal argument in front of the court, and the court's decision, focused on highly technical and detailed arguments about the meaning and effect of the Carriage of Goods by Sea Act 1992 and the application of case law dating back to 1937 (*R&W Paul Ltd v National Steamship Company Ltd (The Harcalo)*[2]). The court concluded that the consignee had title to sue, that its claim was for the full difference between the contract value of the cargo and the actual damaged value of the cargo and that, pursuant to *R&W Paul*, it made no difference to the quantum if the consignee had already made partial recovery from the person from whom it had purchased the goods. The court also seemed to confirm that the precedent case law dictated that the consignee could recover such sums irrespective of whether it undertook to hold any 'double recovery' on trust for its seller. The owner was found liable to pay the full

[1] [2018] EWHC 629 (Comm)
[2] (1937) 59 Ll L Rep 28

sum to the consignee without deduction and no credit was given for the amount the consignee had already recovered from its seller.

"OWNERS STILL HAVE POWERFUL ARGUMENTS TO REDUCE ANY QUANTUM FOR WHICH THEY MAY BE LIABLE."

A key tenet of the English law approach to damages is that damages should be compensatory, i.e. damages should attempt, as far as money is able, to put the claimant in the position it would have been in had the contract been properly performed. Precedent on this principle dates back to the 19th century and it has since been repeated on numerous occasions in the House of Lords (now the Supreme Court). The decisions in *The Baltic Strait* and *R&W Paul* do not appear to consider this principle and their outcomes seem to offend it because they risk handing the bill of lading holder a windfall.

Therefore, whilst owners faced with claims from bill of lading holders who may have made some recovery from elsewhere are likely to have *The Baltic Strait* quoted at them as justification for a full damages claim, that may not be the end of the matter. Owners still have powerful arguments to reduce any quantum for which they may be liable.

FOR MORE INFORMATION

Should you like to discuss any of the matters raised in this Briefing, please speak with the authors below or your regular contact at Watson Farley & Williams.

ANDREW WARD
Partner
London

+44 20 7863 8950
award@wfw.com

STEFANOS MOLYNDRIS
Trainee Solicitor
London

+44 20 3314 6467
smolyndris@wfw.com

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