UK DEFENCE CLUB

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soundings

Singapore seminar highlights

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The UK Defence Club held a successful seminar and cocktail reception at the Conrad Hotel in Singapore on 28th September for its regional Members and their brokers.

Coming just after the Formula 1 race the weekend before, the seminar attracted over 50 participants together with overseas visitors from Thomas Miller including John Morris (Chairman of Thomas Miller Asia-Pacific) from Hong Kong, Daniel Evans (Club Manager, Thomas Miller Defence) and Paul Pelling (Senior Underwriting Director), Paul Sessions (UKDC Senior Claims Director) and Andrew Ward (Director of Thomas Miller War Risks) who all travelled from London, and Motohiro Sugiura (the UK P&I Club's representative) from Japan.

The seminar covered topical subjects of interest to the Club's Members in the region. Paul Sessions spoke about shipbuilding disputes in particular on the recent Court of Appeal decision in the case of the RAINY SKY, a case in which the UK Defence Club has supported the buyer Member and which is under appeal to the Supreme Court. Andrew Ward discussed a number of piracy related issues and Kenneth Lie (Director of Thomas Miller South East Asia) from Singapore outlined recent developments in Singapore Law.

A cocktail reception was held in the hotel's atmospheric poolside rooms after the seminar that saw discussion of the various aspects of the presentations and regional developments until late in the evening. A raffle was also held which was won by Ms Li Jing of NOL.

"New" Arrest Requirements in Singapore?

Following the Court of Appeal case of the VASILY GOLOVNIN ([2008] SGCA 36) in 2008, the Singapore shipping community has been getting to grips with its ramifications. Opinion is divided as to whether the Court of Appeal changed the landscape of ship arrest in Singapore or whether the court has only re-emphasised different aspects of requirements that were already there. One thing is certain, the costs of arrest have increased significantly as lawyers and their clients take no chances in filing ever more comprehensive affidavits in support of an arrest application to avoid findings of material non-disclosure and possibly wrongful arrest, the main focus of the Court of Appeal judgement.

The case began with the "Chelyabinsk" and a carriage of rice from China/India to Lome, Togo. The financing banks of the sub-charterer, Rustal, were also holders of the bills of lading as security. Rustal and the banks wanted to change the disport from Lome to Douala, and to also have a corresponding switch of bills of lading that ultimately did not occur.

The ship made its way to Lome where court orders were obtained arresting the cargo and the ship, essentially on the basis that the shipowner had discharged at Lome instead of Douala. After hearing full submissions, the Togolese court held that the shipowner had acted properly and the arrest was set aside. Soon thereafter, a sistership, the VASILY GOLOVNIN, was arrested in Singapore for essentially the same claim as that dealt with in the Lome proceedings.

The Singapore Court of Appeal set aside the arrest finding that there had been material non-disclosure, that there was no sustainable cause of action and there had been an abuse of the arrest process. It was also found that the bank was estopped from pursuing its claim because of the proceedings that had taken place in Lome. Perhaps more significantly, the judgment revitalised a lesser known aspect of the test for malice, necessary to find an arrest wrongful. The test has its origins in the 19th century English case of the EVANGELISMOS (1858) 12 Moo PC 352 where the court held that malice, or gross negligence amounting to malice, was the basis for a finding of wrongful arrest. In the VASILY GOLOVNIN, the Court of Appeal focussed on another part of the test, that the "...action was so unwarrantably brought or brought with so little colour or so little foundation that it implies malice or gross negligence...." on the part of the arresting party.

It seems it is now no longer sufficient for an arresting party to simply hold a subjective honest belief or to rely on legal advice that an arrest can be carried out. There will be a more objective inquiry at the time of the arrest into the prevailing circumstances and available evidence. The implications of the case are not insignificant. Frivolous arrest should now be discouraged and there is likely to be greater protection for shipowners in borderline cases. There is however likely to be a corresponding increase in the time required to prepare an arrest affidavit and an increase in costs is inevitable.

Important Change to the Singapore International Arbitration Act

In 2009, two experienced Singapore High Court judges made widely disparate findings on the issue of whether the Singapore court had the power to grant interim measures, for example mareva injunctions in support of foreign arbitrations, that is arbitrations whose seat was not in Singapore.

The judge in the SWIFT FORTUNE 1 case (Swift Fortune Ltd v Magnifica Marine SA [2007] 1 SLR 629) said the International Arbitration Act ("IAA") did not give the court any such power. But in the case of Front Carrier Ltd v Atlantic & Orient Shipping Corp ([2006] 3 SLR 854) another judge held that the IAA and/or the Civil Law Act gave the court the power to do so. Both cases were referred to the Singapore Court of Appeal ("CA"). The CA heard the SWIFT FORTUNE 1 case first and agreed that the IAA did not give the court such a power. The CA left open the question whether the Civil Law Act could give the court the power as it was aware the Front Carriers appeal was pending. Unfortunately, the parties in the Front Carriers case subsequently settled and the appeal was withdrawn.

However, given the widespread interest in the cases and their importance to Singapore's development as an international arbitration centre, the Singapore Parliament intervened and amended the IAA so that, with effect from 1st January, 2010, section 12(7) of the IAA was deleted and section 12 (A) was enacted making it indisputable that the court has the power to grant interim measures in support of foreign arbitrations.

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