

Shipping & International Trade

Claims for Ship Damage – Proof of Cause

Introduction

In the Singapore High Court decision of *Pan-United Shipping Pte Ltd v Cummins Sales and Service Singapore Pte Ltd* [2017] SGHC 198, our team has once again demonstrated its prowess. The Court awarded Judgment to the Plaintiff ship owner who brought a claim against the Defendant (an international engine service company) for damage caused to one of its ship's engines during overhaul.

Our team was led by Mr Philip Tay and Ms Yip Li Ming of Rajah & Tann Singapore LLP.

Facts

The ship while at sea had radioed its office of suspected rope entanglement at its propeller which is a fairly routine complaint that should not have caused damage. The Plaintiff nonetheless ordered the ship to Singapore for safety reasons to remove the rope and an underwater survey was carried out.

While no rope was found, it was noted that the propellers had minor damage at non-critical areas. As the ship was already in Singapore, the shipowners decided to take advantage of the visit to do an engine repair and overhaul and engaged the Defendant to do so.

Before carrying out any work, the Defendant performed an engine test to assess what repairs were needed. While the need for some repairs was noted, the Defendant found the engines were able to function. On that basis, the engines were handed to the Defendant for repairs.

Following the completion of repairs, the Defendant carried out the exact same type of test but this time, the Port Main Engine ("PME") broke down and the main bearings and journals were found to be severely damaged.

The Claim

The Plaintiff's case was that the Defendant's own operation and maintenance manual set out a procedure to "warm up" or prime the engine lubrication oil system before starting the engine when the engine has been shut down for more than 5 days or where there has been a change of lube oil. It was undisputed that the PME was shut down for 15 days during the top overhaul and there was a complete oil change. The Defendant however did not prime the PME before the post-overhaul test and that caused the breakdown.

The Defendant refused to admit responsibility and the Plaintiff sued. In an "all out" Defence, the Defendant presented the Court with a mass of theories including that the PME was already vibrating abnormally before their repairs although no such vibration was seen during the pre-overhaul test.

The Defendant called no less than 3 experts and 6 engineers as witnesses and they produced all sorts of engineering literature and even performed an engine test at great cost. Also the Defendant filed one Court application after another and added one expert after another.

Client Update: Singapore

2017 AUGUST

LAWYERS
WHO
KNOW
ASIA

Shipping & International Trade

For the Plaintiff, the case was very difficult as critical technical documents were missing. Further, all the ship's crew had either passed away, could not be located or refused to come back to Singapore to give evidence. We nonetheless assembled a team of Partner, Associates, Experts and Surveyors from London Offshore Consultants and a Professor from Nanyang Technological University (NTU) Singapore.

Holding of the High Court

We navigated the Court through the mass of conflicting technical evidence, such as engine manuals, engineering treatise, survey reports including underwater surveys, classification surveys and loss of use claims.

Mr Tay's cross examination of the Defendant experts and witnesses at trial showed the Defendant's evidence was unsustainable.

The High Court held that the Defendant had damaged the PME because its technicians failed to prime the engine which led to the seizure of the main engine bearings.

Judgment was given to the Plaintiff for the cost of the repairs, loss of use for the 4 months the ship engine was under repair, cost of all expenses including cost of surveys, superintendents' costs and even costs of agency and bunkers while the vessel was in port. The Court also awarded interest of 5 years to the Plaintiff and legal costs.

Cause of damage - Pre-existing damage vs Lack of Priming

The Court concluded that insufficient lubrication was the more probable cause of the damage to the PME. The Court noted that the PME was operable up to the time Defendant took custody of the PME for tests and repairs. The ship had been able to sail to Singapore with the PME operating and no excessive vibrations were observed and the PME could be cranked manually with no problem by Defendant during the pre-overhaul test which was essentially the same test as when the PME broke down.

The Defendant on the other hand failed to prove the excessive vibrations as it did not produce any measurements of the frequencies and amplitude of the alleged "excessive" vibrations, or any engineering computations or quantitative analysis to prove the transmission of sufficient vibration.

Further, the Court held that the Defendant's experts were not qualified experts on vibration. The Defendant's only pleaded case that the PME was already damaged and had abnormal vibration before repair was thus rejected. The Court did not accept the evidence of the Defendant's experts that priming was not needed and the Defendant had not produced evidence of any contrary technical assessment, training materials, or other documentary evidence.

Other causes

The Court noted that much of the Defendant's case was "unpleaded", which the Court technically did not need to consider. However these theories were not proved as well. Thus, the Defendant also argued:

- (i) There was a engine safety system that would have prevented damage due to lack of lubrication;
- (ii) That because not all parts of the engine were damaged, it showed lack of lubrication was not the cause;
- (iii) That there was no need to "prime" the engine, and that the technicians had special skills to start the engine;

Shipping & International Trade

- (iv) There was a sudden impact; and
- (v) They even conducted their own engine test using a brand new engine.

We proved that these defences were mere speculation and the Court rejected all these theories, finding insufficient supporting evidence and excessive speculation.

Concluding Words

In such cases, be it offshore, shipping, civil construction, marine or general insurance or other property damage dispute, the Court (or Arbitrator) is confronted by a mass of technical evidence and expert evidence. In such cases, our team has shown a long history of experience in managing these disputes and expert selection which are keys to winning such cases for our local and international clients.

For further queries, please feel free to contact our team below.

Mr Philip Tay is regularly instructed on Court Cases and International Arbitration. He specialises in International Commodities and Energy Trading disputes, Insurance disputes, Admiralty and Shipping disputes and Construction and Engineering disputes. Many of his cases are reported and he frequently appears as lead Counsel in the Singapore High Court and Court of Appeal.

Contacts

Mr Philip Tay
Partner

D +65 6232 0602
F +65 6428 2075

philip.tay@rajahtann.com

Ms Yip Li Ming
Senior Associate

D +65 6232 0647
F +65 6428 2087

li.ming.yip@rajahtann.com

Please feel free to also contact Knowledge and Risk Management at eOASIS@rajahtann.com

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
F +65 6225 9630
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海
SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP
Shanghai Representative Office**

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*
Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Sole Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN NK LEGAL | *Myanmar*

Rajah & Tann NK Legal Myanmar Company Limited

T +95 9 7304 0763 / +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL
GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 894 0377 to 79 / +632 894 4931 to 32 / +632 552 1977
F +632 552 1978
www.cagatlaw.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

Hanoi Office

T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

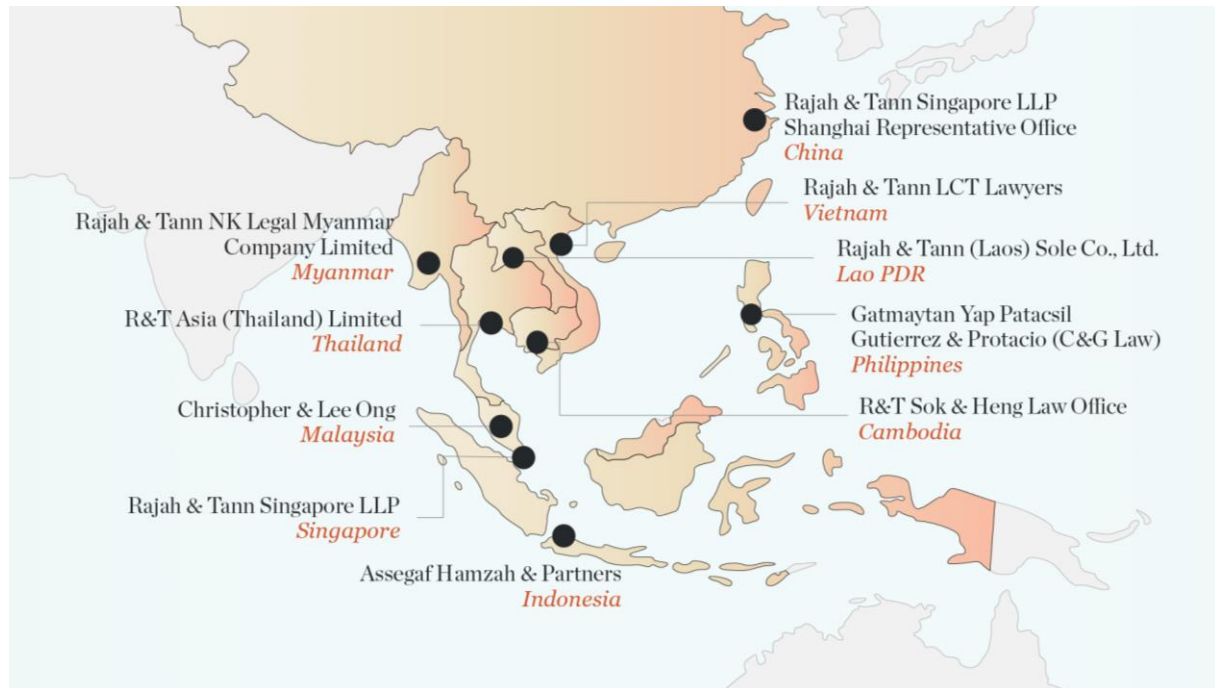
Member firms are constituted and regulated in accordance with local legal requirements and where regulations require, are independently owned and managed. Services are provided independently by each Member firm pursuant to the applicable terms of engagement between the Member firm and the client.

Client Update: Singapore

2017 AUGUST

**LAWYERS
WHO
KNOW
ASIA**

Our Regional Presence



Rajah & Tann Singapore LLP is one of the largest full service law firms in Singapore, providing high quality advice to an impressive list of clients. We place strong emphasis on promptness, accessibility and reliability in dealing with clients. At the same time, the firm strives towards a practical yet creative approach in dealing with business and commercial problems. As the Singapore member firm of the Lex Mundi Network, we are able to offer access to excellent legal expertise in more than 100 countries.

Rajah & Tann Singapore LLP is part of Rajah & Tann Asia, a network of local law firms in Singapore, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Thailand and Vietnam. Our Asian network also includes regional desks focused on Japan and South Asia.

The contents of this Update are owned by Rajah & Tann Singapore LLP and subject to copyright protection under the laws of Singapore and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann Singapore LLP.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Rajah & Tann Singapore LLP or e-mail Knowledge & Risk Management at eOASIS@rajahtann.com.