A change in the assessment of damages?

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The method on which the market value of goods is based may be changing. In a recent international trade case, the English High Court preferred to use a spread of dates rather than the spot rate when determining the market value of goods for the purposes of calculating damages for late delivery. This method may be applied in late delivery of goods by a shipowner.

It is rare for a shipowner to successfully argue that the difference in market value is too remote or consequential. This is because shipowners know that commodity markets fluctuate and cargoes are sold during transit.

Introduction

The basic principle of damages is to put the innocent party in the same position it would have been in had there been no breach of contract. The *prima facie* measure of damages for late delivery of cargo is the difference between the value of the cargo on the last day by which it should have been delivered under contract and when it was actually delivered.

However, determining the market value of a given cargo at different points in time can be very difficult and is often contentious. It has been previously accepted that, under English law, the measure of damages is based on the market value at the date and time of the breach. However, an alternative approach has been taken by the English High Court in a recent international trade dispute between the buyer and seller of fuel oil cargo: *Galaxy Energy International Ltd v Murco Petroleum Ltd [2013]* EWCH 3720 (Comm), 2012 Folio 1077.

Case study

Galaxy, the buyer of 35,000 mt of fuel oil on FOB terms, nominated the *Seacrown* to load the cargo on 6 January 2012. The cargo was to be delivered to the *Seacrown* by the seller, Murco, for loading between 15 and 17 January 2012. Due to delays by Murco, the ship did not berth until 20 January, sailing on the 21 January. Galaxy sought to recover the difference in market value of the cargo between the time the cargo should have been delivered to the ship and when it was actually delivered.

The court was required to determine the market price of the cargo at the date of Murco's breach of contract – i.e. late delivery. Two proposals were put forward:

1) To use the spot price of the cargo as published by Platts on 20 January 2012 (the day on which the cargo was actually delivered).
2) To use the prices of the cargo as published by Platts over a spread of dates from 12–25 January to determine the fairest value.

It was agreed that Platts, a market information provider, publishes its data based on the market, rather than setting the price for the market. The appointed experts also agreed that it was usual for traders to set prices based on the prices published by Platts over a spread of dates.

Conclusion

The presiding judge, Judge Mackie QC, held that a spread of prices is closer to the fair market value than a spot price. It was commented that the fact that a spot price is easier to use when measuring damages is not a reason to prefer this method.

The judgment confirms that, where there is an available market for the goods, the market value can be determined by using the prices published on a spread of dates to show a more accurate picture of the real loss suffered rather than the spot rate for the date (and even time) of actual delivery.